

Message Text

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ACTION ARA-10

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C O N F I D E N T I A L LIMA 6547

E.O. 11652: GDS

TAGS: EINV, EMIN, PFOR, PE, US

SUBJECT: MARCONA NATIONALIZATION - MARCONA SUIT OVER
DEPLETION ALLOWANCE

REF: LIMA 6499

1. JAMES COMPTON INFORMED THE AMBASSADOR AND EMBASSY OFFICERS ON AUGUST 12 THAT HE IS UNDER INSTRUCTIONS FROM HIS HEADQUARTERS TO CONTINUE TO PRESS THE LEGAL ISSUE OF THE "DEPLETION ALLOWANCE" CASE DESCRIBED REFTEL. HE AMPLIFIED HIS COMMENTS TO US YESTERDAY AS FOLLOWS:

A. THE MARCONA CONTRACT WITH THE SANTA CORP. GUARANTEED TITLE AND ALL PRIVILEGES OF A MINING OPERATION TO MARCONA IN 1952, INCLUDING THE RIGHT TO DEDUCT DEPLETION ALLOWANCES. COMPTON CITED ART. 1 OF THE EXPLORATION AND EXPLOITATION CONTRACT BETWEEN THE SANTA CORP. AND THE UTAH CONSTRUCTION COMPANY OF FEBRUARY 7, 1952. HE SAID THAT THIS ARTICLE CLEARLY WILL SUPPORT MARCONA'S CLAIM TO THE RIGHT TO THE DEPLETION ALLOWANCE.

B. COMPTON THEN SAID THAT SINCE THE SUPREME COURT RULED AGAINST THE COMPANY, STATING THAT THE COMPANY HAD
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NEVER BEEN ENTITLED TO DEDUCT THE DEPLETION ALLOWANCE

BECAUSE, ACCORDING TO THE COURT'S INTERPRETATION, THE SANTA CORP. COULD NOT GRANT A DEPLETION PRIVILEGE TO MARCONA. THE TAXES RESULTING FROM THE ELIMINATION OF THE DEDUCTIONS FOR THE DEPLETION ALLOWANCE OVER A PERIOD OF YEARS THEREFORE CAUSED MARCONA TO BE LIABLE FOR APPROXIMATELY \$20 MILLION, WHICH IT WAS PAYING OFF TO THE GOP.

C. HOWEVER, MARCONA HOLDS THIS AMOUNT ON ITS BOOKS AS A RECEIVABLE FROM THE SANTA CORP. OR, NOW ITS SUCCESSOR, HIERROPERU. MARCONA HEADQUARTERS, FOR U.S. TAX PURPOSES, THEREFORE PLANS TO BRING SUIT IN A PERUVIAN COURT SO THAT IT COULD DEMONSTRATE TO THE U.S. TAX AUTHORITIES ITS CLAIMS CONCERNING THE LEGAL STATUS OF THIS AMOUNT.

D. COMPTON SAID THERE IS SOME URGENCY REGARDING THIS CASE BECAUSE THE MARCONA MINING COMPANY- PERUVIAN BRANCH STILL LEGALLY EXISTS IN PERU AND CAN THEREFORE BRING SUIT IN LOCAL COURTS. HIS HEADQUARTERS IS CONCERNED THAT THE GOP MIGHT CANCEL THE RIGHT OF THE BRANCH TO FUNCTION IN PERU (THE DECREE LAW NATIONALIZING MARCONA, ACCORDING TO COMPTON, SEIZED THE ASSETS BUT IT DID NOT AFFECT THE EXISTENCE OF THE COMPANY). SHOULD THE RIGHT OF THE BRANCH TO FUNCTION BE CANCELLED, IT WOULD BE THAT MUCH MORE DIFFICULT FOR MARCONA TO BRING SUIT IN PERUVIAN COURTS.

E. COMPTON SAID THAT IT WILL TAKE SEVERAL DAYS FOR ESTUDIO OLAECHEA TO PREPARE THE PAPERS AND THAT NOTHING WOULD HAPPEN TODAY, NOR PROBABLY TOMORROW, BUT THAT THE CASE MIGHT BE FILED OFFICIALLY SOON AFTERWARDS.

F. COMPTON ALSO SAID THAT HE WOULD NOT SIGN THE PAPERS FOR THIS CASE PREPARED BY ESTUDIO OLAECHEA UNTIL AFTER HE TALKS WITH THE AMBASSADOR TO FIND OUT ABOUT THE STATUS OF POSSIBLE NEGOTIATIONS BETWEEN THE COMPANY AND THE GOP. HE NOTED BOTH TO THE AMBASSADOR AND SEPARATELY TO AN EMBASSY OFFICER, HOWEVER, THAT FURTHER AND OTHER MARCONA OFFICIALS COULD NOT WAIT INDEFINITELY WHILE THE GOP DECIDES WHETHER AND/OR HOW TO HANDLE THE QUESTION OF EVENTUAL COMPENSATION.

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2. COMMENT: COMPTON TALKED TO HIS HEADQUARTERS TODAY AND IS OBVIOUSLY REFLECTING THEIR VIEWS THAT THEY MUST BE PREPARED FOR THE WORST IN CASE NEGOTIATIONS DO NOT GET OFF THE GROUND OR ARE ABORTED IN THE PROCESS. WHILE, AS COMPTON NOTED, IT MIGHT TAKE SOME TIME FOR THE GOP TO BECOME AWARE OF THE FILING OF THE PAPERS, IF MARCONA GOES AHEAD WITH THIS STEP PRIOR TO THE OPENING

OF NEGOTIATIONS, THIS COULD SOUR THE ATMOS-
PHERE. WE THEREFORE SUGGEST THAT THE DEPARTMENT MAY WISH TO DISCUSS
THIS ASPECT OF MATTERS WITH MARCONA HEADQUARTERS IN ORDER TO MAINTAIN
CLOSE COORDINATION WHICH HAS SO FAR EXISTED. WE, OF COURSE, WILL
KEEP IN CLOSE TOUCH WITH COMPTON HERE.
DEAN

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